IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.7.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P.No.5166 of 2002
& W.P.M.P.No.7259 of 2002

1. Union of India rep. by its
   Chief Secretary,
   Government of Pondicherry,
   Pondicherry.

2. Secretary, Welfare Department,
   Government of Pondicherry,
   Chief Secretariat,
   Pondicherry. .. Petitioners

vs.

1.R.V.Swatantra Kumari

2. The Central Administrative Tribunal,
   Madras Bench, Rep. by its Registrar. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the order passed in O.A.No.495 of 1998 dated 20.4.2000 on the file of the second respondent herein (Central Administrative Tribunal) and quash the same.

For petitioners : Mr.Syed Mustafa for
Govt. Pleader (Pondicherry)

For respondent-1 : Ms.D.Nagasaila
II Tribunal.

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ORDER

(The Order of the Court was made by F.M.Ibrahim Kalifulla,J)

The Union of India, represented by its Chief Secretary, Government of Pondicherry, Pondicherry and the Secretary, Welfare Department, Government of Pondicherry, Chief Secretariat, Pondicherry, are the petitioners herein.

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2. The challenge is to the order of the Central Administrative Tribunal, dated 20.4.2000 passed in O.A.No.495 of 1998. The said O.A was preferred by the first respondent herein, praying for the relief of considering her for appointment to the post of Director, Department of Women and child Development, Government of Pondicherry, in the revised scale of Rs.10,000-325-15,200 with all other consequential benefits.

3. The Tribunal, by referring to G.O.Ms.No.22/96, Welfare, dated 22.8.1996, held that the petitioners are bound to appoint the first respondent. Accordingly, the Tribunal directed them to appoint the first respondent in terms of paragraph 3 of the said G.O. The Tribunal also fixed the time limit of one month from the date of receipt of a copy of the order, for complying with the direction.

4. Assailing the said order of the Tribunal, learned counsel representing the Government Pleader of Pondicherry contended that while under the G.O.Ms.No.22/96, dated 22.8.1996, on bifurcation of the Social Welfare Department into the Social Welfare Department and the Department of Women and Child Development, it was contemplated for creation of Selection Grade PCS Officer to Head the Department and that until the proposed post is duly created and filled up, the seniormost Officer of the Department of Women and Child Development, i.e. Programme Officer, to act as the Head of the Department for Women and Child Development, that while the first respondent as Programme officer, was allowed to function as the Head of the Department, a G.O. came to be issued in G.O.Ms.No.9/98, Welfare, dated 24.4.1998, in and by which a temporary Group 'A' post of Joint Director in the Directorate of Social Welfare was revived and re-designated as Director of Women and Child Development in the revised scale of pay of Rs.10,000-325-15,200 with the approval of the Lieutenant Governor for conversion of the said post into a permanent one and that after the issuance of the said G.O., regular PCS Officer has been posted to man the post. Learned counsel further contended that the issuance of the said G.O. was by invoking the Pondicherry Civil Service Rules, 1967, in particular Rule 2(c). Learned counsel therefore contended that in the light of the coming into existence of the said G.O.Ms.No.9/98, dated 24.4.1998, there is no right for the first respondent to claim for the post of the Head of Department of Women and Child Development or to become its Director.

5. As against the above submissions, learned counsel appearing for the first respondent contended that G.O.Ms.No.9/98, dated 24.4.1998 was not issued by invoking Rule 2(c) of the Pondicherry Civil Service Rules and therefore, the said G.O. will not preclude the claim of the first respondent for holding the post of the Head of Department of Women and Child Development. Learned counsel further contended that none of the stipulations contained in Rule 2(c) have been taken care of while issuing G.O.Ms.No.9/98, dated 24.4.1998 and therefore, the petitioners are not entitled to rely on the said G.O. to deprive the first respondent's claim.

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6. We have considered the rival submissions of the parties. When we peruse Rule 2(c) which is a definition clause, which defines 'duty post', we find that it consists of three parts. The first part states that any posts specified in Schedule-I to the Rules are duty posts. In the second part, it is stipulated that the duty post will also include a temporary post carrying the same designation as any of the posts specified in Schedule-I and that the scale of pay of such post should be identical to that attached to the service. The third part states that any other temporary post declared as duty post by the Administrator will also come within the definition of 'duty post'. Schedule-I consists of the sanctioned strength of various posts, which are governed by Rule 3. Rule 3 classifies the service as Junior Administrative Grade, Grade-I (Selection Grade) and Grade-II. While Junior Administrative Grade and Grade-I are further classified as Central Civil Service Group 'A' posts, the Grade-II posts have been classified as Central Civil Service Group 'B' posts. When we peruse the Schedule-I, there were as many as 62 sanctioned posts and the same consists of Junior Administrative Grade posts and Grade-II and Grade-I (Selection Grade) posts. The Grade-II and Grade-I (Selection Grade) posts have been classified under one caption under Schedule-I. When we peruse the various designated posts mentioned therein, as pointed out by the learned counsel for the first respondent, while there are general posts as Deputy Secretary/Under Secretary, Deputy Collector, Deputy Labour Commissioner, District Registrar and Transport Commissioner, all the other posts have got certain definite specifications, such as Director of Social Welfare, Director of Survey and Land Records, Deputy Director of Local Administration Department, etc. Therefore, a strict application of Rule 2 (c) will make it clear that either it should be one of the posts specified, which are in existence as on date in Schedule-I or a temporary post carrying the same designation as any of the posts specified in that Schedule and the scale of pay should also match the said temporary post. Otherwise, there should be a specific declaration of a temporary post as duty post by the Administrator.

7. In the case on hand, when we peruse the G.O.Ms.9/98, dated 24.4.1998, we find that the main part of the G.O. reads as under:

> "Approval of the Lieutenant Governor is hereby conveyed to the revival of one temporary Group A post of Joint Director (Rs.3000-4500) in the Directorate of Social Welfare and to redesignate it as Director of Women and Child Development in the revised scale of Rs.10,000-325-15,200 with immediate effect. Approval of the Lieutenant Governor is also conveyed for conversion of the said post into a permanent one."

8. A reading of the above said main part of the G.O. discloses that in the first place, there is no reference to Rule 2(c) at all. Secondly, it states that it is by way of revival of one temporary Group 'A' post of Joint Director. In the Schedule-I, there is no post designated

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as Joint Director falling under Group-A. Therefore, it is not one of the specified posts designated as such in the Schedule-I with reference to which the G.O. came to be issued on 24.4.1998. The mere mention in the G.O. to the effect that the temporary Joint Director post in the Group 'A' in the Directorate of Social Welfare on being re-designated as Director of Women and Child Development in the revised scale of Rs.10,000-325-15,200 by itself would not make the said G.O. to have been validly issued under Rule 2(c) of the Pondicherry Civil Service Rules, 1967.

9. Secondly, the said G.O. does not state that any temporary post has been declared as a duty post by the Administrator. In this context, reliance placed upon the decision of the Supreme Court reported in AIR 1974 SC 555 (E.P.Royappa vs. State of Tamil Nadu) by the learned counsel for first respondent assumes significance. In paragraph 82 of the said judgment, the Supreme Court has pointed out that if any post is to be created by invoking a specific rule, the order creating such post should specify all the stipulations contained in the rule, or otherwise, the order will be invalid. Relevant part of the said judgment in paragraph 82 reads as under:

> "82. ... If the State Government wants to appoint a member of the Indian Administrative Service to a non-cadre post created by it, it cannot do so unless it makes a declaration setting out which is the cadre post to which such non-cadre post is equivalent in status and responsibility. The making of such a declaration is a sine qua non of the exercise of power under sub-r. (1). It is not an idle formality which can be dispensed with at the sweet will of the Government. It has a purpose behind it and that is to ensure that a member of the Indian Administrative Service is not pushed off to a non-cadre post which is inferior in status and responsibility to that occupied by him. ... "

10. The said statement of law was made by the Supreme Court while applying Rule 9 of the Indian Administrative Service (Pay) Rules, 1954, which specifically mentions that a declaration to the effect that the post is equivalent in status and responsibility to a post specified in the Schedule, should be made.

11. The above law laid down by the Supreme court squarely applies to the facts of this case, where again, if G.O.Ms.No.9/98, dated 24.4.1998 is to be construed as having created a temporary post by invoking Rule 2(c) of the Pondicherry Civil Service Rules, such a temporary post ought to have been made by way of declaration as 'duty post' by the Administrator. In this context, if we read Rule 4(4) of the Pondicherry Civil Service Rules, we find creation of the duty post should be for a specified period in the order itself creating such post. None of the stipulations contained either in Rule 2(c) or Rule 4(4) have been taken care of while issuing

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G.O.Ms.No.9/98, dated 24.4.1998.

12. In such circumstances, no reliance can be placed upon G.O.Ms.No.9/98, dated 24.4.1998. Consequentially, it will have to be held that the Head of Department for the Department of Women and Child Development should be governed only by G.O.Ms.No.22/96, dated 22.8.1996. Paragraph 3 of G.O.Ms.No.22/96 is to the specific effect that, "For the Department of Women and Child Development, one Selection Grade PCS Officer will be the Head of the Department. Until the proposed post is created and filled up, the seniormost officer of the Department of Women and Child Development i.e. Programme Officer will be the Head of the Department for the Department of Women and Child Development."

13. In the reply statement filed before the Tribunal, the petitioners have categorically stated in paragraph 7 that the proposal for creating the post of Director to Head the Department of Women and Child Development had been initiated with the advice of the Union Public Service Commission and that due to some administrative reasons, creation with the consultation of the UPSC could not be done.

14. In such circumstances, until and unless creation of such post in accordance with the Rules is duly carried out, it goes without saying that the Programme Officer of the Department of Women and Child Development alone can act as the Head of the Department of Women and Child Development. To that extent, the right of the first respondent to hold the post of the Head of the Department while holding the post of Programme Officer, cannot be denied by the petitioners. We however make it clear that as Programme Officer, the first respondent can act as the Head of the Department of Women and Child Development. Therefore, the order of the Tribunal directing the petitioners to appoint the first respondent in terms of paragraph 3 of G.O.Ms.22/96, dated 22.8.1996, cannot be found fault with.

15. The Writ Petition therefore fails and the same is dismissed. No costs. W.P.M.P. is closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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Copy to

1. The Chief Secretary,
   Union of India,
   Government of Puducherry,
   Puducherry,

2. The Secretary, Welfare Department,
   Government of Puducherry,
   Chief Secretariat,
   Puducherry.

3. The Registrar.,
   The Central Administrative Tribunal,
   Madras Bench, Chennai.

+ 1 CC To Ms.D.Nagasaila, Advocate SR NO.40237

+ 1 CC to the Government Pleader, Pondicherry, SR NO 40164

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gp/13.7.

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